

IN THE HIGH COURT OF DELHI AT NEW DELHI
SUBJECT :RIGHT TO INFORMATION ACT

Date of Decision: 06.11.2013

W.P.(C) 6944/2013

SHAIL SAHNI

..... Petitioner

Through: Petitioner in person

versus

VALSA SARA MATHEW AND ORS

..... Respondent

Through: Mr. Sunil Satyarth, Adv. for R-1 to 3

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court submitted an application to the CPIO of Delhi Cantonment Board on 25.11.2011 seeking certain information. According to the petitioner, no reply to the said application was received by him within the prescribed period and, therefore, he preferred an appeal before the First Appellate Authority on 26.12.2011. The grievance of the petitioner is that the aforesaid appeal is still pending with the First Appellate Authority, since 26.12.2011.

The petitioner submitted yet another application to the CPIO, Delhi Cantonment Board on 5.1.2012, seeking information. Vide letter dated 7.2.2012, the petitioner was asked to collect the aforesaid information on payment of Rs.846/-. According to the petitioner, he prepared cheque of Rs.846/- and submitted the same to CPIO on 18.4.2013 for supplying the aforesaid information. The petitioner states that the aforesaid cheque, however, has not been encashed by CPIO and the desired information has not been supplied to him.

Being aggrieved from the failure of the respondent to supply the information pursuant to his application dated 25.11.2011 and 5.1.2012, the petitioner is before this Court seeking the following reliefs:

“A- issuance of a Writ in the nature of writ of mandamus or any other appropriate writ or Order or Direction directing respondents to expeditiously

within 15 days furnish/supply copies of proceedings of cantonment board & complete information's/documents to petitioner as per his application's under Right to Information Act dated 25.11.2011 & 5.1.2012 along with amount of Rs.610000/- (six lakh ten thousand only) to petitioner as special, exemplary, monetary compensatory cost/damages and ten thousand cost of the present petition and with orders of imposing fine amount RS.FOUR LAC as punishment Upon respondent No.5 Shri Sanjeev Nayyar member ward NO.3 Delhi Cantt and Direction to respondent No.3 and 4 (CEO cantonment board and Union of India) to exercise their inherent powers and take disciplinary action against respondent No.1 and 2 under the service rules applicable to them.”

2. A similar issue came up for consideration before this Court in another writ petition being W.P(C) No.3500/2013 filed by the petitioner Mr. Shail Sahni and vide order dated 5.7.2013, the following view was taken:

“2. Section 7(1) of the Right to Information Act, to the extent it is relevant, provides that CPIO or SPIO, as the case may be, on receipt of a request under section 6 shall either provide the information sought by the applicant or reject the request within 30 days of the receipt of the request. Sub section (2) of Section 7 provides that if the CPIO or SPIO, as the case may be, fails to give a decision on the request within the above referred time, he shall be deemed to have refused the request. Section 19(i) of the Act provides that a person who does not receive a decision within the time stipulated in sub section (1) of Section 7 may within 30 days from the expiry of such period prefer an appeal to such officer senior in rank to the CPIO or SPIO as the case may be. Such an appeal can be admitted even after expiry of the aforesaid period if the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from filing an appeal in time. The appeal preferred under sub section (1) of Section 19 is required to be disposed of within 30 days of its receipt or within such extended period not exceeding a total of 45 days from the date of filing, for reasons to be recorded in writing. A second appeal under sub section 3 of section 19 is provided to the Central Information Commission or the State Information Commission against the decision given under sub section (1) of the said Section. The Commission is competent not only to require the Public Authority to provide access to the information but also to compensate the complainant for any loss or other detriments suffered by him. The Commission can also impose any of the penalties provided under the Act. Section 20(1) of the Act provides that where the Commission at the time of deciding any complaint or appeal is of the opinion that the Central Public

Information Officer or the State Public Information Officer, as the case may be, had, without any reasonable cause, refused to furnish information within the time specified time, it shall impose a penalty of two hundred and fifty rupees each day till application was received or information is furnished subject to maximum penalty of twenty- five thousand rupees: The burden of proving that he acted reasonably and diligently lies the CPIO or the SPIO, as the case may be. The Commission is also competent to recommend disciplinary action against CPIO or SPIO in case it finds that he had without any reasonable cause and persistently not furnished the information within the specified time. The Commission is also mandated by law to receive and inquire into the complaint from any person who has been refused to access to any information requested under the Act or who has not been able to give a request in response of any information access within the time limit specified in the Act.

3. It would thus be seen that two remedies were available to the petitioner on account of the alleged failure of the CPIO to provide the requisite information to him. He could file an appeal before the senior officer of CPIO under Section 19(1) of the Act and could also make a complaint to the Commission under Section 18(1) of the Act. The remedy of appeal provided under Section 19(1) of the Act cannot be said to be a remedy less efficacious than a writ petition, since such an appeal is required to be decided within a maximum period of 45 days from the date it is filed. A complaint to the Commission is also an effective remedy since not only can the Commission impose penalty upon CPIO, it can also recommend disciplinary action against him. However, the petitioner has not chosen to avail remedies available to him under Section 18(1) and 19(1) of the Act.

4. It was contended by the petitioner that his earlier appeals were not decided by the Appellate Authority within the time stipulated in the Act and, therefore, the remedy of an appeal under Section 19(1) of the Act cannot be said to be an efficacious remedy. I, however, find no merit in this contention. If the Appellate Authority does not decide the appeal within the statutory time fixed under sub section (6) of Section 19, it may be open to the aggrieved person to come to this Court for a direction to the Appellate Authority to decide his appeal without any further delay, but, unless he avails the statutory remedy of appeal provided under Section 19 of the Act, it would be difficult to entertain a writ petition, bypassing the statutory mechanism provided under the Act.”

3. In view of the aforesaid decision, the petitioner has a remedy of appeal under Section 19 (1) of the Act as far as his application dated

5.1.2012 is concerned and he must necessarily avail the said remedy instead of seeking reliefs in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution.

4. As regards the grievance of the petitioner that his appeal dated 26.12.2011 has not been decided by the First Appellate Authority, the writ petition is disposed of with a direction to First Appellate Authority to decide the appeal of the petitioner received vide Diary No.9823 on 26.12.2011 within a period of four (4) weeks of receipt of a copy of this order.

There shall be no orders as to cost.

Sd/-
V.K. JAIN, J

NOVEMBER 06, 2013